



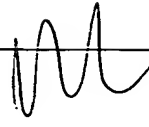
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,986	03/20/2004	Edward W. Phillips	170.001	8945
9651	7590	11/17/2004		
ELLIOT B. ARONSON 5001 HARBORD DRIVE OAKLAND, CA 94618			EXAMINER NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/804,986	<b>Applicant(s)</b> PHILLIPS ET AL. 	
	<b>Examiner</b> Frederick C. Nicolas	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/20/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3,5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Good, Jr. 5,353,968 in view of Klassen 4,133,457.

Good, Jr. discloses a closure (14) for use in combination with a flexible container (10) for a pourable viscous fluid, which comprises a dispensing opening (12) for pouring the fluid from the container and the closure being secured to the periphery of the dispensing opening so as to cover the opening as seen in Figures 1-2, the closure comprises a plurality of at least three part lines (16) through the membrane. Good, Jr. lacks that the membrane having a primary vent orifice. Klassen teaches the use of a membrane (26) having a primary vent orifice (34).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Klassen's vent orifice at the end portion of the part lines of Good, Jr., in order to equalize the internal and external pressures of the container walls, as taught by Klassen in (col. 4, ll. 30-58).

With respect to the claimed subject matter in claim 6, "the connecting elements form a generally circular pattern about the vent orifice".

It would have been obvious to one having ordinary skill in the art at the time the invention was made to change the shape of the connecting elements of Good, Jr. and Klassen, since it has been held that a change in the shape of the element involves only routine skill in the art. In re Dailey, 149 USPQ 47 (CCPA 1966).

3. Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Good, Jr. 5,353,968 in view of Klassen 4,133,457 as applied to claim 1 above, and further in view of Markva 4,938,390.

Good, Jr.-Klassen in combination has taught all the features of the claimed invention except that at least seven part lines defining at least seven approximately equal sections of the membrane. Markva teaches the use of a membrane having at least seven part lines (16,17,19) and as seen in Figure 3.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the membrane of Good, Jr. and Klassen to have at least seven part lines, as taught by Markva in (col. 5, ll. 1-7), in order to provide better control over the quantities of material being dispensed.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kamin 4,356,935, Haggerty 4,331,254, Drobish et al. 4,728,006, Wood et al. 3,698,598, Brown et al. 5,439,143, Brown 5,409,144, Chester 3,241,726 and Stull 5,071,017 disclose other types of closure membrane.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-


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305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y Mar, can be reached on 703-308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
November 12, 2004

 11/12/04  
Frederick C. Nicolas  
Patent Examiner  
Art Unit 3754